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PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of

NORM PRESSLEY

Serial No.: 10/634,363

Filed: August 4, 2003

)
) **FOR: PUTTER ALIGNMENT TRAINING**
) **SYSTEM**
)
)
) Group Art Unit: 3711
)

**PETITION TO WITHDRAW HOLDING OF ABANDONMENT BASED ON
FAILURE TO RECEIVE OFFICE ACTION AND
THE OFFICE ACTION WAS INVALIDLY ISSUED, UNDER 37 CFR § 1.181**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Commissioner:

This communication is in response to the Notice of Abandonment dated June 15, 2006.

Please consider the following petition:

I hereby certify that this correspondence
is being deposited with the United States
Postal Service as first class mail in an
envelope addressed to: Commissioner for Patents,
P.O. Box 1450, Alexandria, VA 22313-1450
on 07-19-2006

Thomas J. Tighe, Esq.

(Registered Representative)


(Signature)

07-19-2006

(Date of Signature)

CHRONOLOGY OF APPLICATION

The instant application was filed on August 4, 2003.

A first Office Action was mailed May 28, 2004; it included no objections to the drawings filed August 4, 2003.

A second and final Office Action was mailed October 28, 2004; it included no objections to the drawings filed August 4, 2003.

A Notice of Allowability was mailed by the Office on May 20, 2005; it indicated that the drawings filed on August 4, 2003 were accepted by the Examiner. The notice indicated an issue fee of \$700 due August 10, 2005.

On August 22, 2005 applicant mailed to the Office the \$700 issue fee. The issue fee was accompanied by a Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b) and the required petition fee of \$750. The Office received the fees and the petition August 25, 2005.

On May 10, 2006 the Office granted applicant's petition for revival and that same day mailed to applicant a Decision on Petition Under 37 CFR 1.137(b). The decision letter indicated that the matter was being referred to the Publishing Division.

On June 15, 2006 the Office mailed a Notice of Abandonment indicating that the application was abandoned in view of applicant's failure to timely file a proper reply to an Office letter mailed on September 16, 2005 (the Office letter in question).

NO RECORD OF HAVING RECEIVED THE SEPT. 16, 2006 OFFICE LETTER.

Applicant's attorney of record, Thomas J. Tighe, has filed herewith a declaration under penalty of perjury attesting to the fact that his office has no record of having received the Office letter in question. He has stated that all correspondence between the Office and applicant concerning the instant application has gone through his office. He has stated that he did a thorough search of all files, file jackets, and docketing records concerning the instant application, and that he has found no record of having received the Office letter in question. He has also stated that neither he nor applicant has any recollection of having received the Office letter in question. He has stated that he handles all docketing for his office and he has attached to his declaration a print-out of his

entire docketing record for the subject application, and that there are no entries concerning the purported Office letter in question.

Had applicant's attorney received the Office letter in question, he would have promptly, according to his longstanding custom and practice, made one or more entries concerning the Office letter in question so as to meet all reply time limits. The fact that the docket records contain no references to the Office letter in question strongly indicative that such a letter was not received by applicant's attorney.

Thus the Director should find that applicant did not receive the Office letter in question and withdraw the abandonment.

THE HOLDING OF ABANDONMENT SHOULD BE WITHDRAWN REGARDLESS OF WHETHER APPLICANT RECEIVED THE OFFICE LETTER IN QUESTION, BECAUSE IT WAS AN INVALIDLY ISSUED OFFICE ACTION.

As mentioned above, applicant unintentionally failed to pay the issue fee on the due date of August 10, 2005. Twelve days later, on August 22, 2005, applicant filed by mailing certificate a Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b) and the required petition fee of \$750. Since a petition for revival under 1.137(b) requires that the petitioner also concurrently reply to all outstanding Office actions, applicant sent the issue fee and the issue fee transmittal with the petition - payment of the issue fee was the only outstanding reply needed from the applicant on August 22, 2005.

The mailing date on the Office letter in question is September 16, 2005. This means that the Office letter in question, if it was mailed, was not an outstanding office action on August 22, 2005 when applicant filed his petition for revival. Therefore it would have been impossible on August 22, 2005 for applicant to include with his petition a reply to the Office letter in question because it had not yet been mailed to him. Moreover since the application was technically abandoned on August 10, 2005, the Office letter in question was not a valid office action at all because it was dated more than five weeks after abandonment. Even if applicant had received the Office letter in question and had replied to it within the time limit set forth in the letter, applicant's reply would have been rejected by the Office because at that time the application was abandoned - applicant's petition for revival was not granted until May 10, 2006.

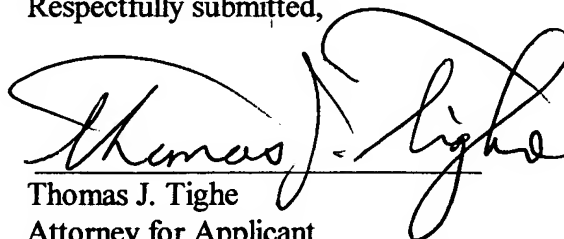
So even if applicant had received the Office letter in question, he was in a Catch-22 situation. He had already filed his petition for revival weeks before so that any reply to the Office letter in question would be considered too late for the pending petition, and since the application was at that time abandoned pending a decision on his petition, the Office would have rejected any reply on the basis that the application was abandoned. So it would have been impossible for applicant to meet any time limit of the Office letter in question, even if he had received it.

This case raises a novel legal issue the resolution of which applicant's attorney has not yet been able to find. The legal issue is this: "After an application has become abandoned and a petition for revival is pending, is it proper for the Office, while the petition is pending, to issue an Office action requiring a reply before the pending petition has been resolved?" While applicant's attorney cannot yet list supporting citations, it is respectfully submitted that any office action issued while an application is abandoned is invalidly issued. Fairness and justice would demand that any office action issued while a petition for revival is pending be stayed and re-issued if and when revival is granted.

Thus the Director should find that the Office letter in question was an invalidly issued office action because issued on an abandoned application, and withdraw the abandonment.

Since receiving the Notice of Abandonment applicant has been informed that the September 16, 2006 Office letter required correction of certain drawings according to an attached form PTO-948. Therefore attached to this Petition are seven Replacement Sheets of corrected drawings concerning Figs. 1-6, and applicant requests that they be accepted into the subject application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Thomas J. Tighe", with a large, stylized flourish extending from the end of the signature.

Thomas J. Tighe
Attorney for Applicant
Registration No. 29,451, Cust ID 45543



REPLACEMENT SHEET

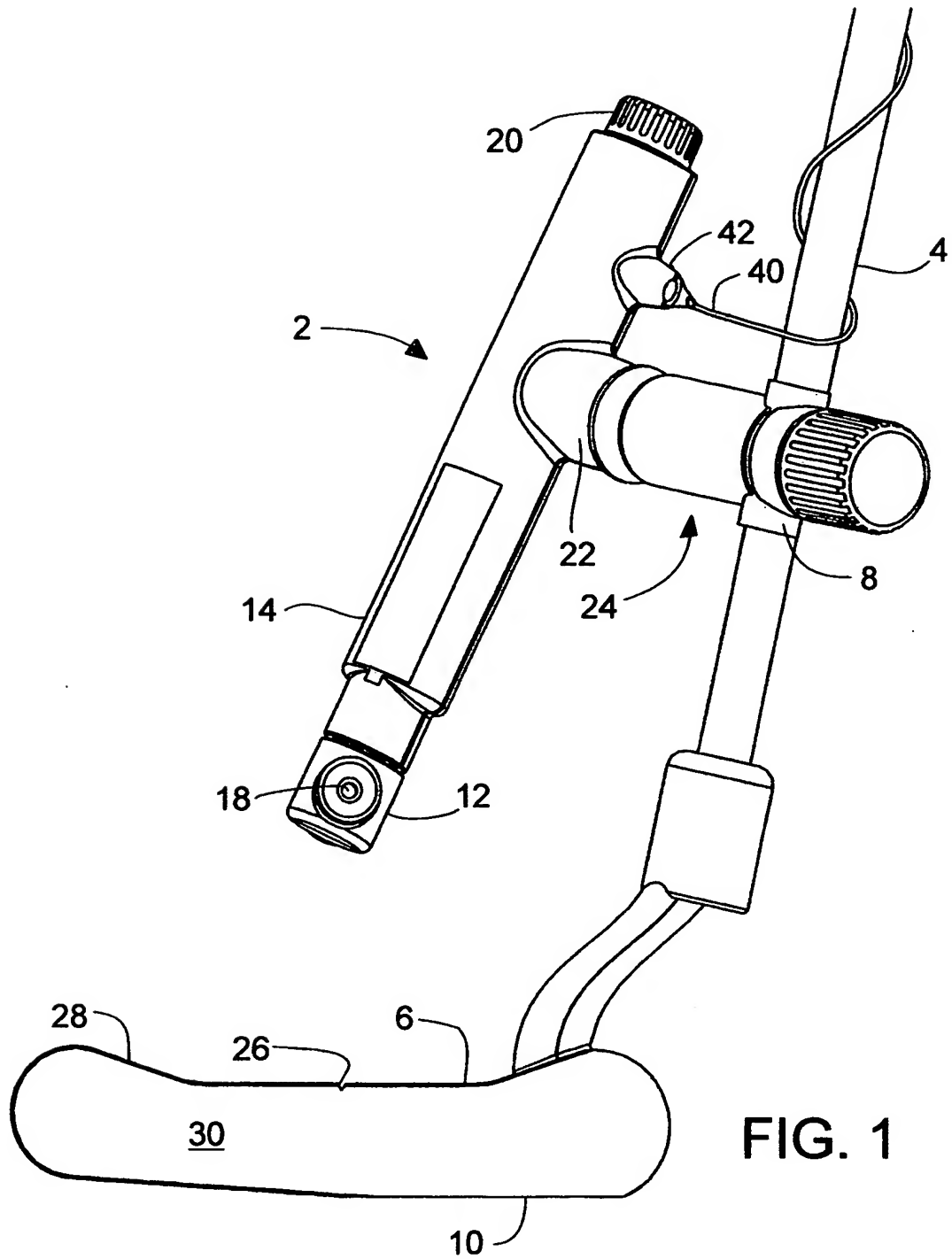


FIG. 1

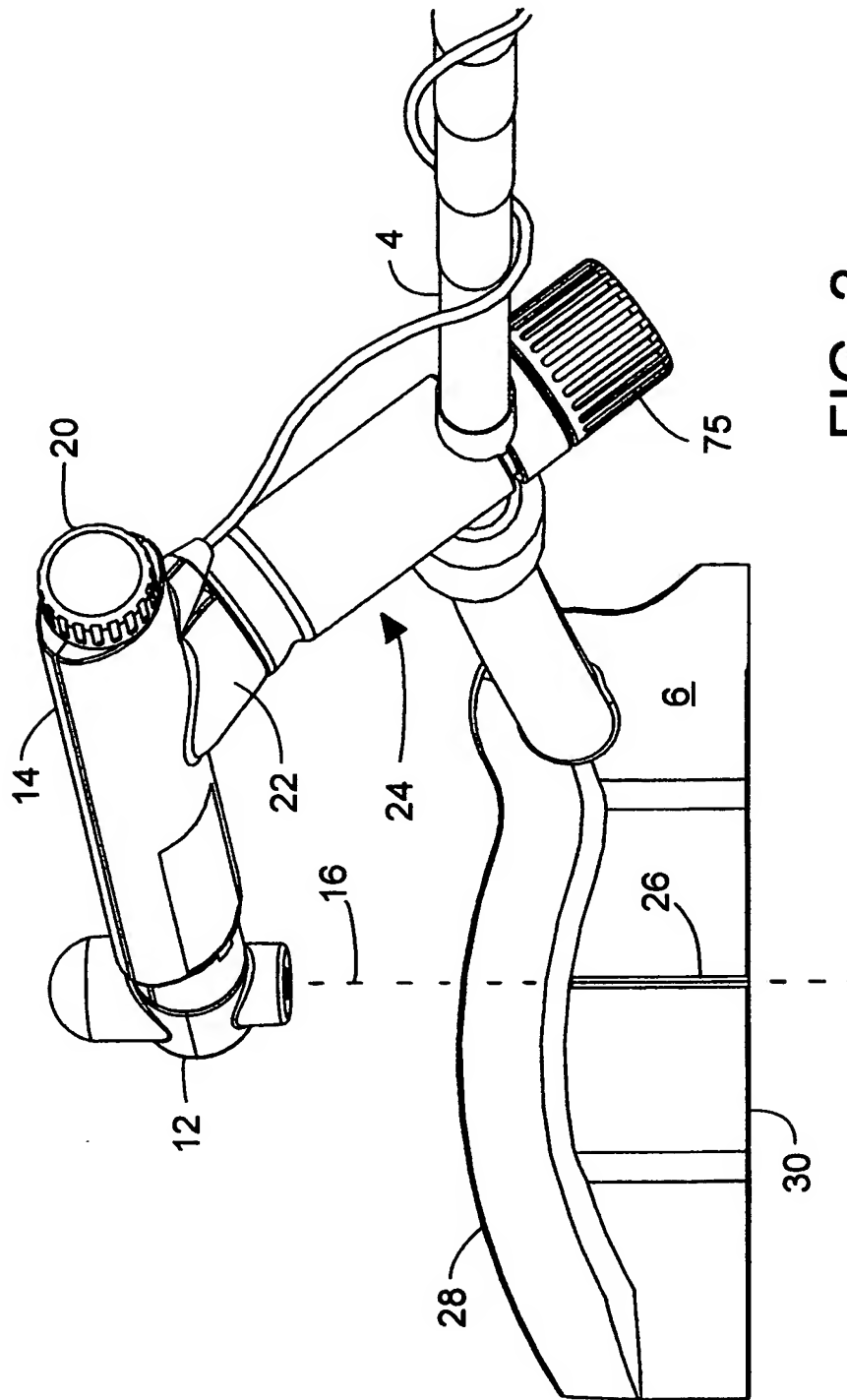


FIG. 2

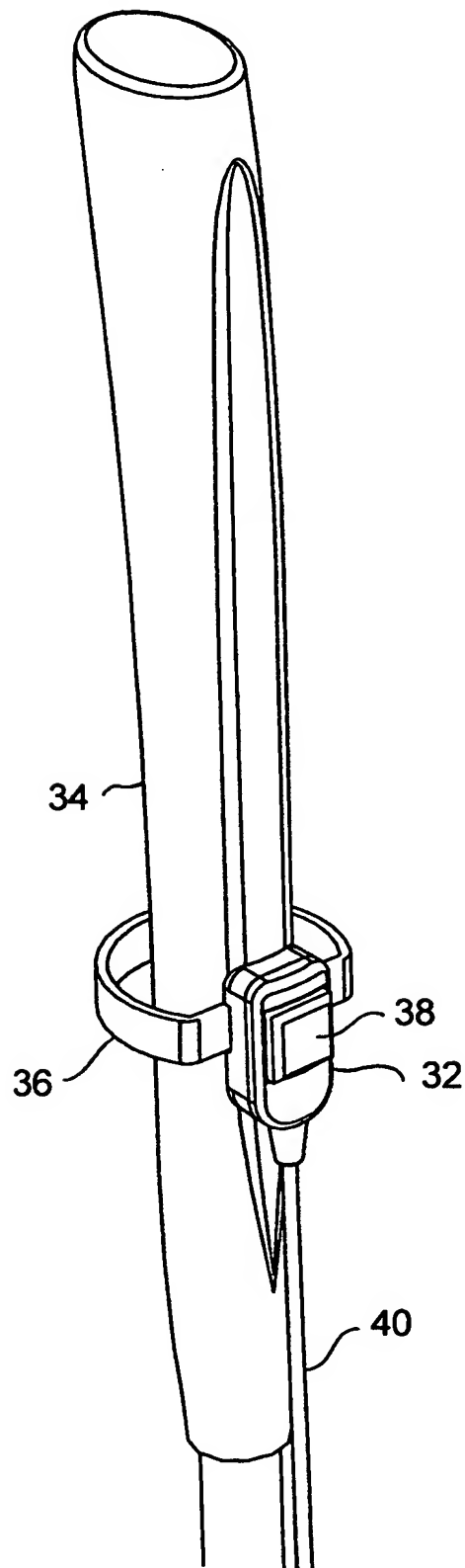
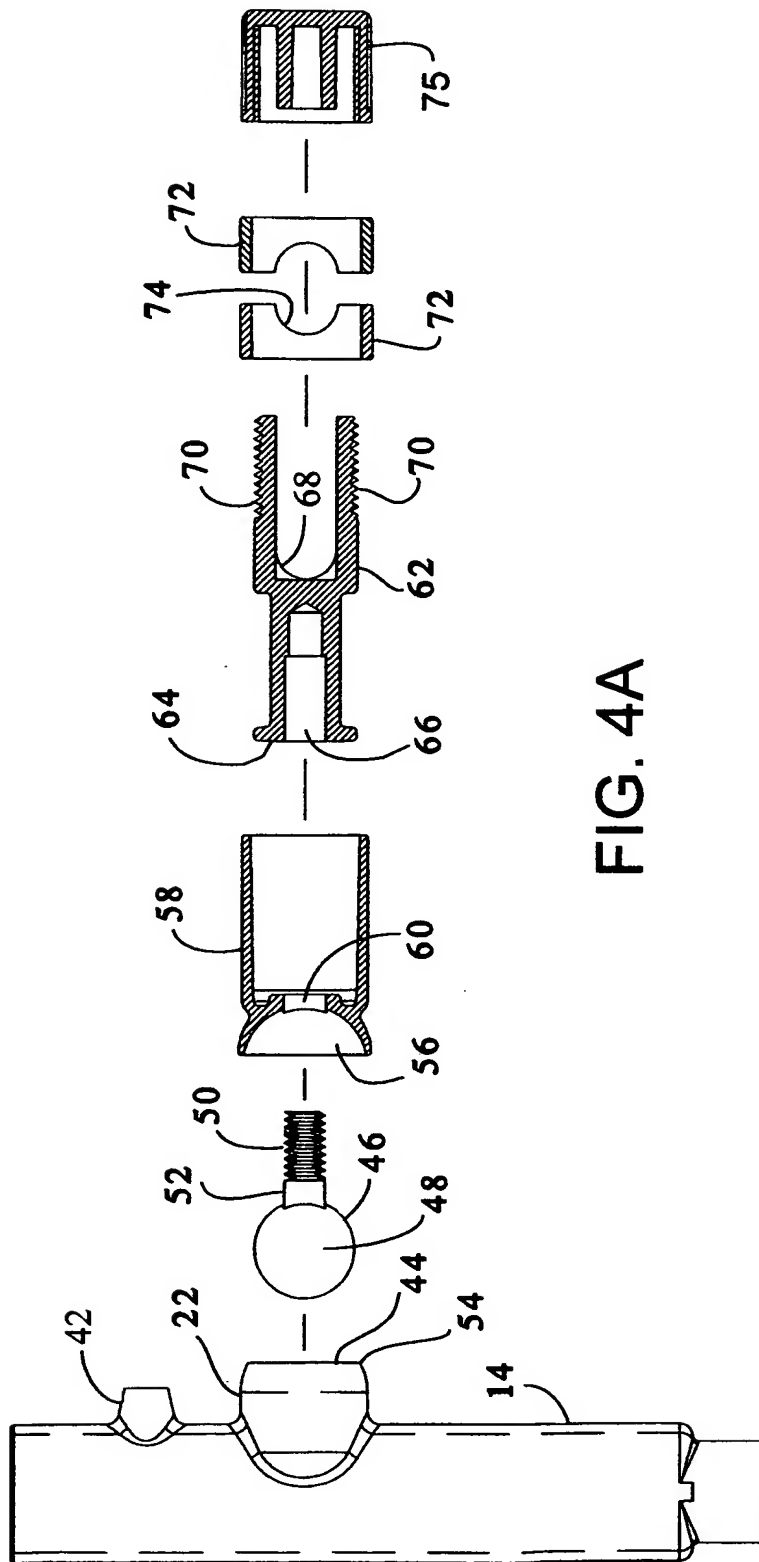


FIG. 3



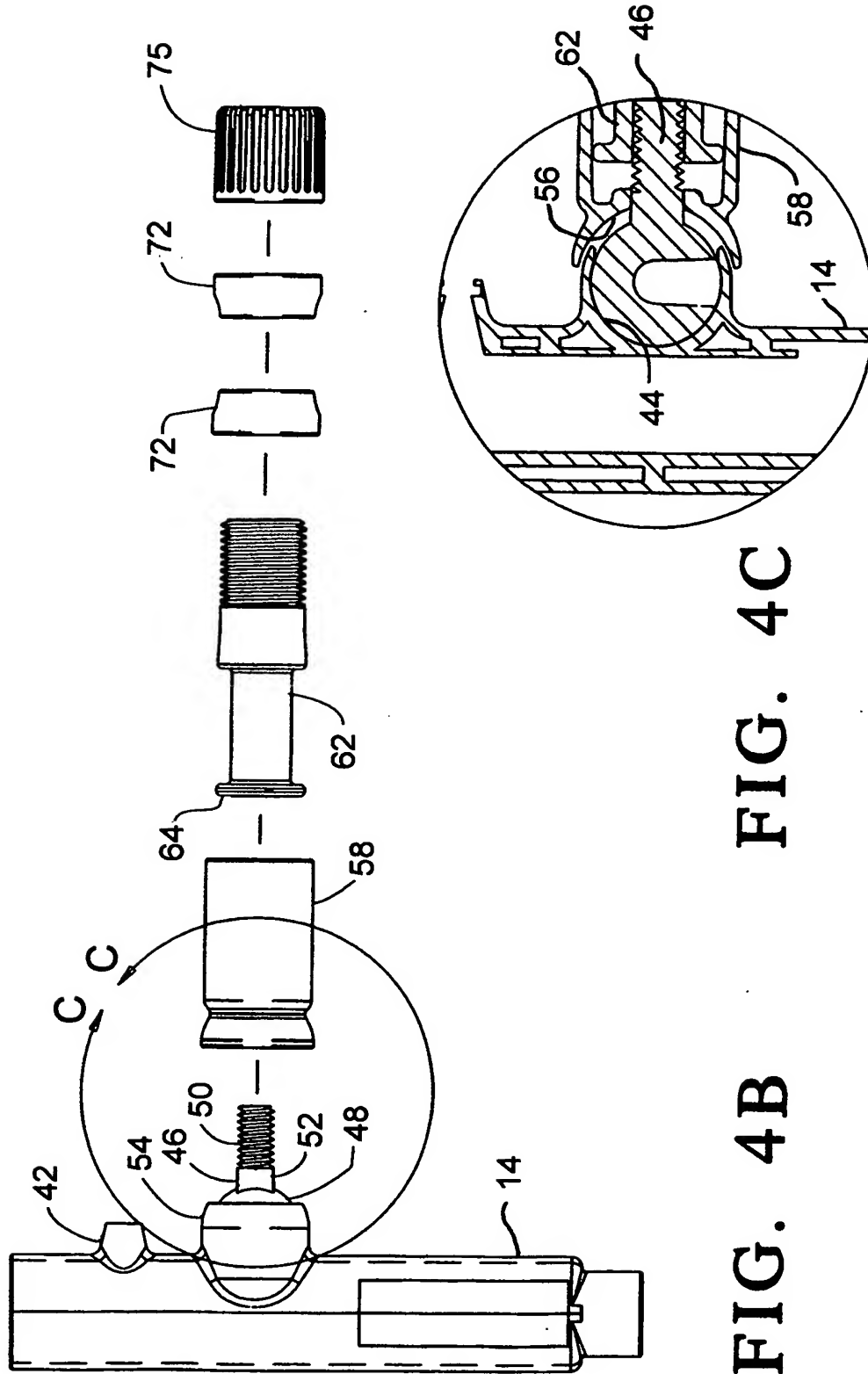


FIG. 4B

FIG. 4C

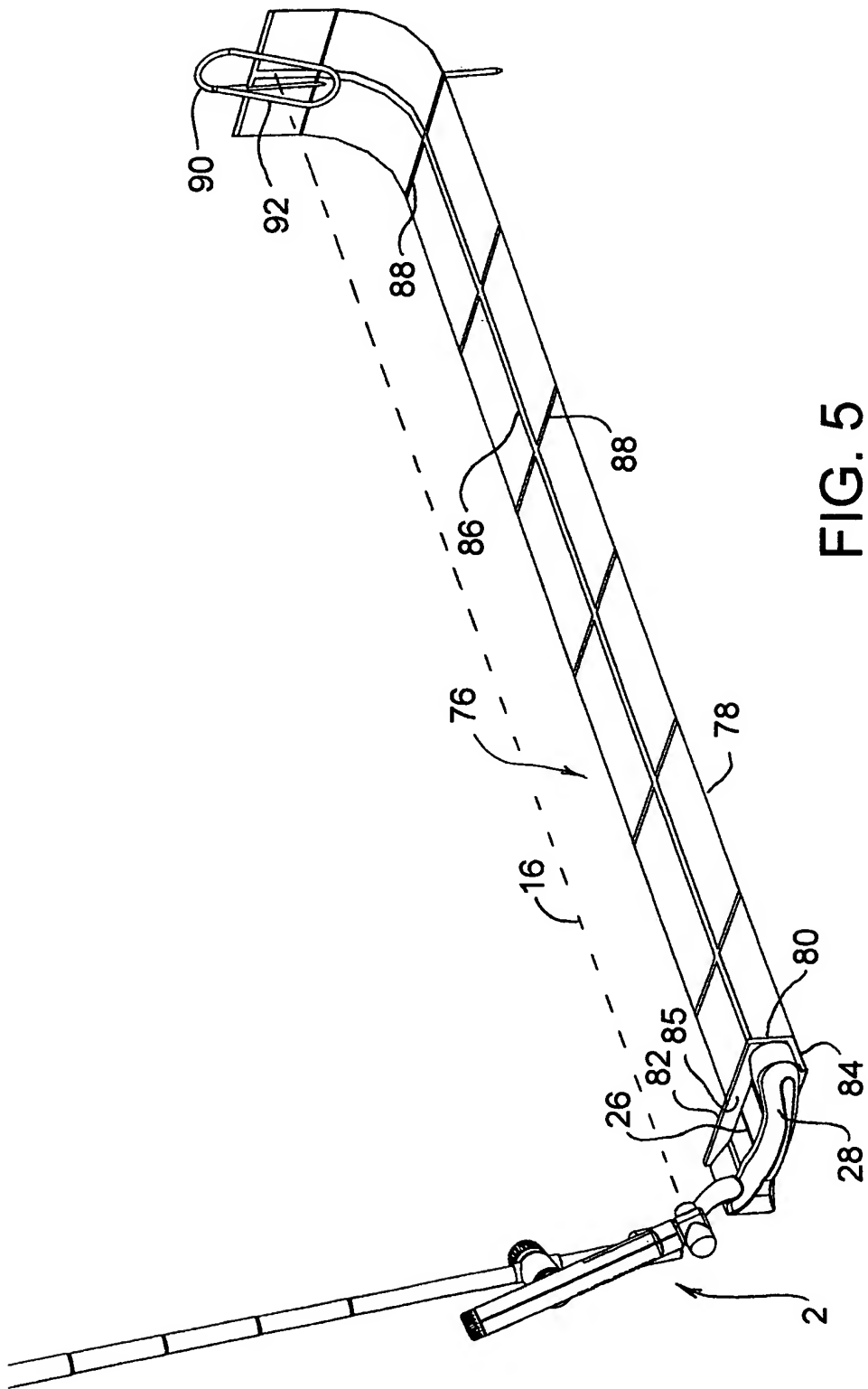


FIG. 5

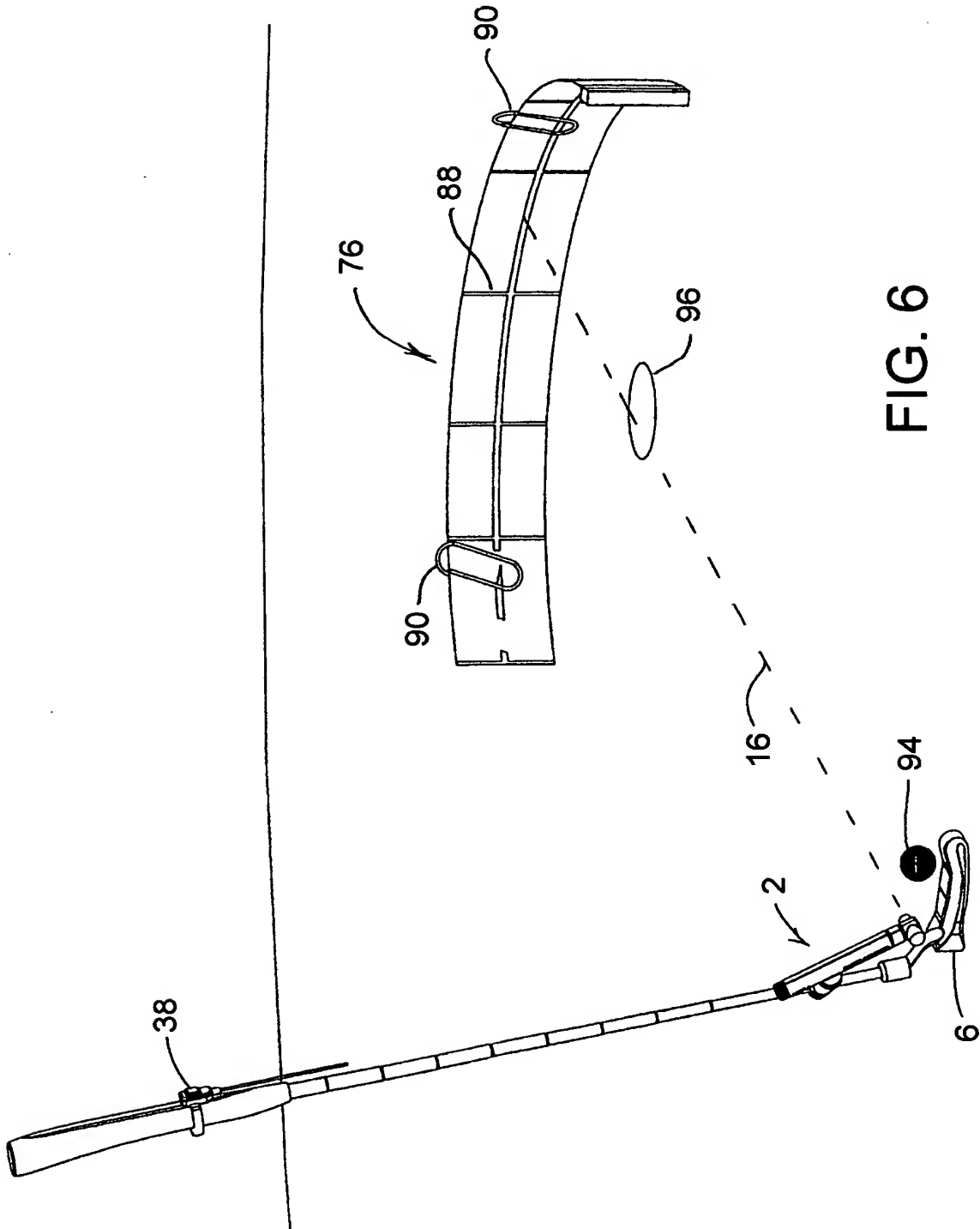


FIG. 6



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) **FOR: PUTTER ALIGNMENT TRAINING**
 NORM PRESSLEY) **SYSTEM**
)
 Serial No.: 10/634,363)
) Group Art Unit: 3711
 Filed: August 4, 2003)

**DECLARATION OF THOMAS J. TIGHE, APPLICANT'S ATTORNEY,
IN SUPPORT OF APPLICANT'S PETITION TO
WITHDRAW HOLDING OF ABANDONMENT**

I, Thomas J. Tighe, declare as follows:

I am Applicant's attorney of record herein. I have personal and firsthand knowledge of the facts stated herein and if called as a witness would competently testify thereto.

From the start of the prosecution of this application to date, all correspondence between the Office and applicant concerning the instant application has gone through my office.

Upon receipt of the Notice of Abandonment dated June 15, 2006, I thoroughly searched the file, file jacket, docketing and all other records of the instant application. I found no record of having received an Office letter dated September 16, 2005.

I hereby certify that this correspondence
is being deposited with the United States
Postal Service as first class mail in an
envelope addressed to: Commissioner for Patents,
P.O. Box 1450, Alexandria, VA 22313-1450
on 07-19-2006

Thomas J. Tighe, Esq.
(Registered Representative)

Thomas J. Tighe
(Signature)

07-19-2006
(Date of Signature)

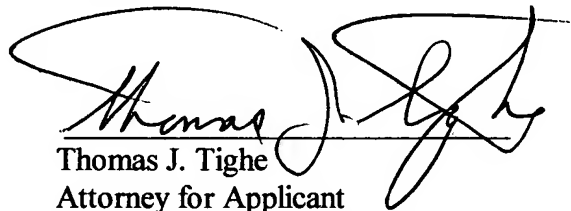
I also have no recollection of having received the Office letter in question. If I had received the Office Letter in question I would have remembered it because of its very odd timing. September 16, 2005 is four months after I had received the Notice of Allowability stating that the drawings in the application were "accepted."

I do all the docketing for my office. I make all docketing entries and am solely responsible for updating docketing. I use a computerized docketing program called Abacus that has been in wide use in law offices for many years.

Attached hereto is a true and correct print-out of my entire docketing record for the subject application. Had I received the Office letter in question, I would have promptly, according to my longstanding custom and practice, made one or more docket entries for replying to the Office letter in question so as to meet all reply time limits. It should be noted that there is no entry pertaining to the Office letter in question. The fact that the docket records contain no reference to the Office letter in question is strongly indicative that I did not received it.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Thomas J. Tighe", is written over a horizontal line.

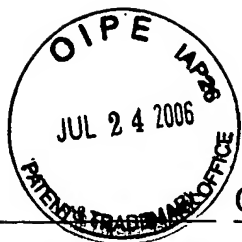
Thomas J. Tighe
Attorney for Applicant
Registration No. 29,451
Cust ID 45543

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Tighe & Associates

Page 1



*Short Format Calendar
Date Range: ALL
1 Case Number

Day	When	ID	Case No.	What	Note
Wed	12/10/03	PRESSLY-5462	5462 PA01	NOTE	Check on filing receipt rcvd. FD 8-4-03
Mor	12/15/03	PRESSLY-5462	5462 PA01	F-DOCS	Filing Receipt rcvd. File for correction re nonpub request
Mor	03/15/04	PRESSLY-5462	5462 PA01	IDS	File IDS. FD 8-4-03.
Mor	08/30/04	PRESSLY-5462	5462 PA01	AMEND	Respond to OA dated 5/28/04
Fri	01/28/05	PRESSLY-5462	5462 PA01	AMEND	Respond to final OA dated 10-28-05. Need to do RCE.
Wed	08/10/05	PRESSLY-5462	5462 PA01	ISSU FEE	Pay issue fee \$700. NOA dated 5-10-05. Dwgs OK.
Mor	08/22/05	PRESSLY-5462	5462 PA01	ISSU FEE	Pay issue fee \$700. NOA dated 5-10-05. Dwgs OK. Need Pet for revival + \$750.
Wed	02/22/06	PRESSLY-5462	5462 PA01	STAT CHK	Check status of Pet 4 Revival - mailed 8/22/05.
Thu	08/10/06	PRESSLY-5462	5462 PA01	STAT CHK	Revival granted. Check status of issuance.
Tue	08/15/06	PRESSLY-5462	5462 PA01	RESPONS	Respond to Notice of Abandonment dated 6-15-2006

Number of Events: 10